

FAX Distribution to:

- Prosecutor 808 241-1758
- Defense Attorney
 - Public Defender 808 274-3422
 - Private Attorney _____
- Adult Probation 808 482-2652
- State Designate 808 832-1855
- 2nd Examiner Dr. _____
- 3rd Examiner Dr. _____
- KCMHC Forensics 808 241-3133
- AMHD Forensics 808 777-6169
- Sheriff Division 808 482-2389
- KPD Cellblock 808 241-1645
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**IN THE _____ COURT OF THE FIFTH CIRCUIT
STATE OF HAWAII**

STATE OF HAWAII,

) **CR. No.** _____

) **FC-CR.** _____

) **REP. NO(S):** _____

) [List offenses or attach complaint, information or
indictment]

vs.

)
)

_____,

Defendant.

) ORDER SUSPENDING PROCEEDINGS,
) FOR EXAMINATION OF DEFENDANT
) UNDER HRS CHAPTER 704, AND
) SETTING FURTHER COURT DATE
) [Fitness & Capacity]
)
) Hearing Date: _____
) JUDGE: _____

_____)

**ORDER SUSPENDING PROCEEDINGS, FOR EXAMINATION OF DEFENDANT
UNDER HRS CHAPTER 704, AND SETTING FURTHER COURT DATE**

A motion for examination under Section 704-404, Hawaii Revised Statutes (“HRS”), was made:

- by Defendant
- by State of Hawaii
- sua sponte by the Court

Said motion came on for hearing on _____. Defendant was present in person via videoconferencing. Defendant’s counsel, _____, and Deputy Prosecuting Attorney _____, representing the State of Hawaii, were present.

Finding good cause, IT IS HEREBY ORDERED that:

A. SUSPENSION OF PROCEEDINGS, HRS § 704-404(1)

Further proceedings herein shall be suspended except for matters pertaining to bail.

B. APPOINTMENT OF EXAMINER(S), HRS §704-404(2)

Defendant shall be examined by:

State Designate
Adult Mental Health Division
Court Evaluation Branch
1700 Lanakila Street
Honolulu, Hawaii 96817

Psychiatrist’s name

Psychiatrist’s, Psychologist’s or Physician’s name

C. DATABASE, HRS §704-404(8)

The Adult Client Probation Services Branch shall obtain and timely make available for inspection by the examiner(s), all existing medical, mental health, social, police and juvenile records, including those expunged, and other pertinent records in the custody of public agencies, notwithstanding any other statutes and Rule 16 of the Hawaii Rules of Penal Procedure.

- The court further orders that alcohol and drug abuse patient records within the scope of 42 C.F.R. part 2 that are in the custody of public agencies be provided to the Adult Client Probation Services for review by the examiner(s).

D. PLACE OF DETENTION AND/OR EXAMINATION

Defendant shall be examined at:

- The Kauai Community Correctional Center, or other correctional facility as deemed appropriate by the Director of Public Safety.
- The Kauai Judiciary Complex, 3970 Kaana Street, Lihue, Kauai, in a secured detention area interview room to be specified by the Department of Public Safety Sheriffs Division. Arrangements shall be made by contacting the Sheriffs Division at (808) 482-2472 **not less than three (3) business days before the desired examination date.**
- A hospital or other suitable facility designated by the Director of Health ["DOH Facility"] to which the Defendant is ordered committed until _____ **(a period not exceeding 30 days)**, unless the Court determines that a longer period is necessary.
- Counsel for the parties have stipulated that a period in excess of 30 days is necessary and the Court so orders.
- The place, date and time requested by the examiner(s). To arrange Defendant's appointment with the examiner(s), examiner(s) shall contact:

Office of the Public Defender
Deputy Public Defender _____
Telephone: (808) 241-7128

- Defendant's Attorney _____
Telephone: _____

E. CONTENTS OF REPORT, HRS §§704-404(4), (5), (6), (7), 704-405, 704-406

The report(s) of the above-identified examiner(s) shall include the following:

1. A description of the nature of the examination.
2. A diagnosis of the physical or mental condition of Defendant at the present time.

3. An opinion as to Defendant's fitness to proceed, i.e., Defendant's capacity to understand the proceedings against Defendant and to assist in Defendant's own defense. If Defendant's capacity to understand the proceedings against Defendant and/or assist in Defendant's own defense is impaired.
 - a. Should Defendant be committed to the custody of the Director of Health to be placed in an appropriate institution for detention, care, and treatment because Defendant, as a result of Defendant's present mental condition, is a danger to Defendant, or the person or property of others? HRS §704-406(1); or
 - b. May Defendant be released on conditions without danger to Defendant or the person or to property of others, and if so, what are those conditions? HRS §704-406(1).
 - c. Is there a substantial likelihood that Defendant will acquire the capacity to understand the proceedings against Defendant and/or to assist in Defendant's own defense within a reasonable period of time? If so provide an estimate of the reasonable period of time. HRS §704-406(3).

4. An opinion as to the extent, if any, to which the cognitive and/or volitional capacity of Defendant, i.e., the capacity to appreciate the wrongfulness of Defendant's conduct and/or to conform Defendant's conduct to the requirements of the law, was impaired at the time of the conduct alleged. If the opinion of the examiner is that Defendant was substantially lacking in cognitive capacity and/or volitional capacity at the time of the alleged offense, the examiner(s) shall advise the Court on the following questions, as applicable:
 - a. Does Defendant pose a risk of danger to Defendant or others?
 - b. If Defendant poses a risk of danger to Defendant or others, should
 - (1) Defendant be committed to the custody of the Director of Health to be placed in an appropriate institution for custody, care, and treatment under HRS §704-411(1)(a) because Defendant is not a proper subject for release on conditions under HRS §704-411(1)(b) or;
 - (2) Can Defendant be controlled adequately and provided with proper care, supervision, and treatment if released on conditions under HRS §704-411(1)(b)? If your answer is yes, state the conditions.

5. An opinion as to the capacity of Defendant to have a particular state of mind which is required to establish an element of the offense charged.
6. A statement that the diagnosis and opinion rendered were arrived at independently of other examiners, unless there is a showing of a clear need for communication between or among the examiners for clarification. A description of the communication shall be included in the report.
7. If the examination cannot be conducted by reason of the unwillingness of Defendant to participate therein, the report shall so state and shall include, if possible, an opinion as to whether Defendant's unwillingness was the result of physical or mental disease, disorder, or defect.
8. Any examiner shall be permitted to make a separate explanation reasonably serving to clarify the examiner's diagnosis or opinion.

F. OTHER

G. DUE DATE OF EXAMINER'S REPORT

The examiner(s) shall file a written report with the Court no later than _____ . An original plus three copies of the report of the examination, including any supporting documents, shall be filed with the clerk of the above-entitled court for distribution to the prosecuting attorney, defendant's counsel and the Adult Client Probations Services Branch.

H. NEXT COURT DATE

Pursuant to Section 704-405, HRS, the issue of Defendant's fitness to proceed shall be determined by the Court. **Defendant is ordered to appear before this Court on _____, 20____, at _____ .m., or sooner, if the examiner(s) has/have completed the examination, and defense counsel can set an earlier court hearing.** If, on the date of such hearing, the Defendant's treating physician determines that transport to the hearing would present a risk of danger to Defendant or others, or if Defendant chooses to waive his/her physical presence at the hearing, Defendant's presence at the hearing may be by way of Video-Conferencing.

DATED: Lihue, Hawaii, _____.

Judge

APPROVED AS TO FORM on _____:

Deputy Prosecuting Attorney

Defense Counsel